

STATE OF MICHIGAN
COURT OF APPEALS

JOHN STANLEY GALEHOUSE, JR., BARBARA
LEE GALEHOUSE, JOHN T. SWEENEY, ANN B.
SWEENEY, DONALD E. GALEHOUSE, ANN J.
GALEHOUSE, GEORGE W. WATTS, LETA M.
WATTS, JAMES L. PELTON, DOROTHY O.
PELTON, PATRICIA EMMENECKER,
JEFFERSON W. KEENER, JR., ROBERT L.
KEENER, and HARRY A. KEENER,

UNPUBLISHED
January 15, 1999

Plaintiffs-Appellees,

v

No. 200097
Roscommon Circuit Court
LC No. 96-007365 CH

RICHARD O. MEEKS and ANNE LOUISE
MEEKS,

Defendants-Appellants,

and

GERRISH TOWNSHIP,

Defendant-Appellee.

Before: Saad, P.J., and Kelly and Bandstra, JJ.

PER CURIAM.

Defendants, Richard and Anne Meeks, appeal as of right the trial court's grant of plaintiffs' motion for summary disposition in this action to quiet title. We reverse and remand.

Plaintiffs brought this action to quiet title to Lake Drive, a roadway running between their properties and Higgins Lake. The Roscommon Circuit Court vacated Lake Drive in 1937. Plaintiffs and defendants became fee title holders to the Lake Drive property pursuant to MCL 560.227a; MSA 26.430(227a), but, because their lot lines were never extended across Lake Drive, a question arose

regarding placement of the boundary lines extending from the parties' lots, as platted across Lake Drive to the lakefront.

Plaintiffs agreed to the partitioning of Lake Drive according to a 1993 survey. Defendants objected to the proposed partitioning. In granting plaintiffs' motion for summary disposition, the trial court noted that the method of partitioning Lake Drive proposed by plaintiffs was that used by other property owners to partition property to the north of the parties' properties, which was ordered by the court through a consent judgment in a separate action. Defendants appeal the trial court's order granting plaintiffs' motion for summary disposition, in which it adopted plaintiffs' proposed partitioning of Lake Drive.

Plaintiffs moved for summary disposition pursuant to MCR 2.116(C)(8), (9), and (10). The court granted the motion without specifying a subrule. Because the trial court considered evidence outside the pleadings, we consider the motion as granted under MCR 2.116(C)(10). MCR 2.116(G)(5).

We review de novo a decision on a motion for summary disposition. *Singerman v Municipal Services Bureau, Inc*, 455 Mich 135, 139 (Weaver, J.), 146 (Mallett, C.J.); 565 NW2d 383 (1997). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Id.* In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court must consider the pleadings, affidavits, depositions and all other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The trial court may grant the motion for summary disposition under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue of material fact and, the moving party is entitled to judgment as a matter of law. *Id.*

Contrary to defendants' suggestion, *Sun Oil Co v Trent Auto Wash, Inc*, 379 Mich 182; 150 NW2d 818 (1967), does not stand for the proposition that summary disposition is inappropriate in all equitable actions. Rather, it provides that summary disposition is inappropriate where there are other questions not before the court that might possibly affect the determination, or there are other aspects of the transaction not before the court that may bear upon the equities of the parties. *Id.* at 191. Summary disposition can be employed in quiet title actions. See, e.g., *Marx v Dep't of Commerce*, 220 Mich App 66; 558 NW2d 460 (1996).

Further, defendants' mere admission in their answer that a controversy exists, by itself, is insufficient to preclude summary disposition under MCR 2.116(C)(10). A party cannot rely on the allegations or denials in the pleadings, but must set forth specific contested facts through documentary evidence. MCR 2.116(G)(4); *Quinto, supra*.

Defendants also argue that subject matter jurisdiction is lacking because a court in equity has no jurisdiction to determine the location of disputed boundary lines. This assertion is incorrect. Jurisdiction to determine interests in land is expressly conferred on the circuit court by statute. MCL 600.2932(1); MSA 27A.2932(1).

Finally, defendants' argument that plaintiffs cannot quiet title to property of which they are not in possession is without merit. MCL 600.2932(1); MSA 27A.2932(1) permits any person claiming an interest in land, regardless of possession, to bring an action to determine that interest as against another. Moreover, pursuant to MCL 560.227a; MSA 26.430(227a), all of the parties are fee owners of Lake Drive.

Nonetheless, we believe that summary disposition was inappropriate because plaintiffs were not entitled to judgment as a matter of law. In granting summary disposition, the trial court stated:

I think the complaint of the plaintiffs makes sense, and I will grant the judgment. *I don't think they have to cite a legal rule.* I think they just applied the former case I mentioned two or three times, and I think it is a good solution to this quandary we have with Higgins Lake frontage. So I grant the motion. [Emphasis added.]

Although the evidence submitted by plaintiffs may have represented a purportedly "good solution" for resolving this boundary dispute, the evidence did not establish that plaintiffs were entitled to judgment as a matter of law. The method proposed by plaintiffs, and adopted by the trial court, was based on the method used by property owners in a different action to partition property to the north of the parties' properties. However, this latter method was the result of a consent judgment and there were factual differences between this case and the former action.

This Court reviews actions to quiet title, which are equitable in nature, de novo. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). In an action to quiet title, the plaintiff bears the burden of proof and must set forth a prima facie case. *Stinebaugh v Bristol*, 132 Mich App 311, 316; 347 NW2d 219 (1984). When the plaintiff makes out a prima facie case, the burden shifts to the defendant to prove a superior title. *Id.*; *Boekeloo v Kuschinski*, 117 Mich App 619, 628-629; 324 NW2d 104 (1982). "A court acting in equity 'looks at the whole situation and grants or withholds relief as good conscience dictates.'" *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992), quoting *Hunter v Slater*, 331 Mich 1, 7; 49 NW2d 33 (1951). This Court's "responsibility is to consider the equities and realities of the situation presented in order to reach the most reasonable result. This Court will overrule or amend a trial court's judgment when 'convinced it would have reached a different result had it been in the lower court's position.'" *Cabal v Kent Co Rd Comm'n*, 72 Mich App 532, 536; 250 NW2d 121 (1976), quoting *Gamble v Hannigan*, 38 Mich App 500, 504; 196 NW2d 807 (1972).

Defendants asserted differences between the instant situation and that of the property owners involved in the earlier consent judgment, namely, the vacation of streets within the area composed of the parties' lots and Gerrish Township's position regarding the northern boundary of Welt Street. The parties also raised allegations, not entirely supported by documentary evidence, regarding their use of Lake Drive and the positions of their cottages in relationship to the lakefront. The trial court did not take these matters into account when it simply borrowed the approach used for other properties in the area. As in *Sun Oil*, because these "possible questions" and "aspects" of this dispute were not considered, the trial court improperly granted plaintiffs' motion for summary disposition.

We reverse and remand. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Michael J. Kelly

/s/ Richard A. Bandstra